

WD37 2003 file



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 29, 2003

Geoffrey C. Smith
17926 Hwy 20
Bellevue ID, 83313

RECEIVED

SEP - 3 2003

Department of Water Resources

Robert Dreyer
PO Box 4917
Ketchum, ID 83340

RE: Notice to regulate well

Gentlemen:

I have received complaints that water is currently not being distributed according to your agreement and the subsequent order issued by the SRBA court dated January 28th, 2002. As you know the department visited the well last month and measured the discharge and observed that all parties had not yet installed measuring devices nor were the headgates adequate to regulate distribution among users. I now understand that both parties have measuring devices but I am not certain that the headgates are acceptable for regulation purposes. (Able to be adjusted and locked.)

Please be advised that according to the agreement and order of January 28th, 2002, the department, and the watermaster of Water District 37, or the watermaster's agents are authorized to regulate your diversions. (see paragraph 7 of the stipulated agreement and paragraph 5 of the order.)

Please also be advised that Title 42, Chapter 7 of the IDAHO CODE provides for the measurement of water. Specifically Section 42-701 states in pertinent part:

42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS
AND MEASURING DEVICES BY WATER APPROPRIATORS -- PROCEDURE UPON
FAILURE TO INSTALL AND MAINTAIN -- MEASURING AND REPORTING OF
DIVERSIONS -- PENALTY FOR FAILURE TO COMPLY -- ENFORCEMENT
PROCEDURE -- REPORT FILING FEE.

(1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices, or has not executed an agreement in lieu of a measuring device as provided in subsection (2) of this section, upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

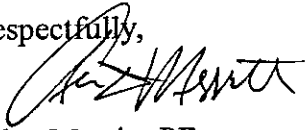
Please consider this letter the "notice" from the director of the department of water resources as described in 42-701 (3) listed above. The department requires you to have in place an adequate measuring device and a lockable headgate on or before September 10, 2003.

It is the intent of the department to inspect and regulate the diversions at 10:00 am on September 10, 2003. If adequate means to measure and control the diversions are not in place the department intends to issue a notice of violation.

Pursuant to your agreement (See paragraph 8 of the agreement) the department will charge a reasonable charge for regulation and assess equally both parties. (Estimate of \$35/hr. including travel time plus cost of locks)

A department representative will see you on September 10th, 2003, absent a notice from both parties indicating the distribution problem has been resolved.

Respectfully,



Allen Merritt, PE
Southern Region Manager

CC: ✓ Tim Luke – IDWR Water Management
Lee Peterson – WM37 & 37M
Norm Semanko
Pat Brown

Enclosed: Copy of Stipulated Agreement
Copy of SRBA Order approving Stipulated Agreement

Aug 29 2003 12:46pm

Last Fax

| <u>Date</u> | <u>Time</u> | <u>Type</u> | <u>Identification</u> | <u>Duration</u> | <u>Pages</u> | <u>Result</u> |
|-------------|-------------|-------------|-----------------------|-----------------|--------------|---------------|
| Aug 29 | 12:42pm | Received | 2087363037 | 2:41 | 9 | Error 244* |

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fax machine is ready to receive faxes. If you're receiving, contact
the initiator and ask them to send the document again.

Tim
Luke

8/29/03

TRANSMITTAL COVER SHEET

TO: Tim Lube
State Office

TOTAL PAGES SENT: 19

(including cover sheet)

DOCUMENT DESCRIPTION:

Fax cover + 18 pp. Memo +

FROM:

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE ST, STE 200
TWIN FALLS ID 83301-3380

PHONE: 736-3033

FAX: 736-3037

CHARGES: One (1) free copy
per request, cover sheet not
counted. Two (2) or more
copies per request will cost
\$0.25 per page (\$0.50
minimum)

Please consider this document as a billing statement.

The charge for your fax copies is: _____

Please remit to the above address.

SENDER:

Allen Merritt
_____COMMENTS: _____

MEMO

FROM: Allen Merritt

DATE: 7/25/2003

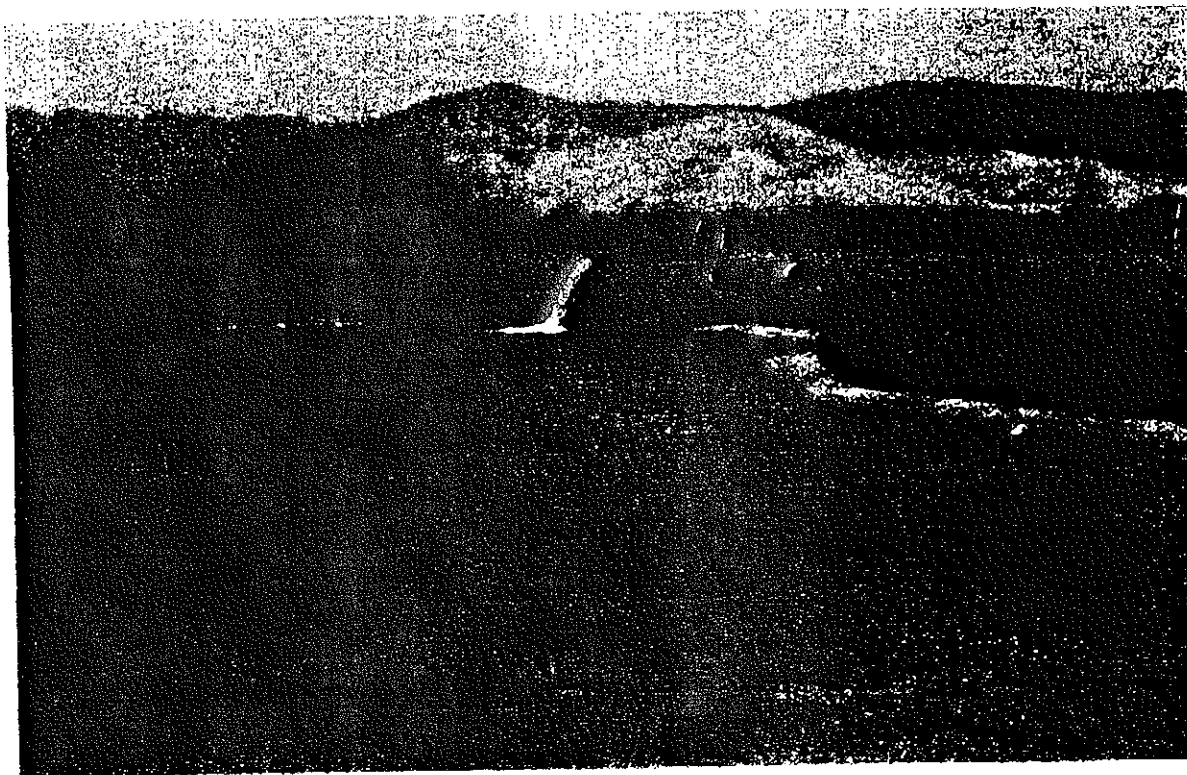
TO: Doug Jones

SRBA Files: 37-2614, 37-14289 in the name of Dreyer
37-4159, 37-20629 in the name of Smith
37-14290 in the name of Stasz

SUBJECT: Field Visit - Measurement of well

In response to a request of the watermaster and complaints of Geoffrey Smith regarding illegal use of ground water by Stasz John Freitag and I visited the well. During the site visit we measured the flow of the well, the diversion to Dreyer and the diversion to Smith. During the site visit Ken Dreyer, Geoffrey Smith, Mark Stasz and Lee Peterson were present at one time and another.

Well: We measured the well using the Fugi meter. We found 1.80 cfs flowing from the well.



DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JAN 24 2002

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

ROBERT DREYER,

Plaintiff,

vs.

GEOFFREY C. SMITH,

Defendant.

Subcase No. 92-00017

ORDER APPROVING STIPULATION
FOR REGULATION OF WATER RIGHT
CLAIMS UNTIL DIRECTOR'S REPORTS
ARE FILED

| | | | | | |
|-------------------|-------|---------|-------------|------|---|
| Post-It* Fax Note | 7671 | Date | 1/24/02 | Page | 5 |
| To | Allen | From | VICKI / NPS | | |
| Co./Dept | | Co. | | | |
| Phone # | | Phone # | 327-5458 | | |
| Fax # | | Fax # | | | |

I.
DESCRIPTIVE SUMMARY

This is an order adopting the stipulation between the parties in the above-captioned subcase, resolving the issues raised in Plaintiff's Verified Complaint.

II.
PROCEDURAL BACKGROUND

1. On May 15, 1998, Robert Dreyer filed a verified complaint seeking a preliminary injunction against Geoffrey C. Smith.

ORDER APPROVING STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED - 1

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2. On May 19, 1998, an order to show cause as to why the preliminary injunction should not issue was issued and hearing set for May 28, 1998. As of May 28, 1998, the parties submitted to the Court a stipulated motion to vacate the hearing.
3. On July 10, 2001, a status conference was held. An additional status conference was held on October 11, 2001 and another Order to Show Cause was issued as of that same date. The show cause hearing was scheduled for January 14, 2002.
4. A *Stipulation for Regulation of Water Right Claims until Director's Reports are Filed* ("Stipulation") executed by the parties involved was submitted to the Court on January 10, 2002. IDWR also concurred with this stipulation as evidenced by the signature of Nicholas Spencer. The Order to Show Cause hearing was thus vacated by order issued January 11, 2002.

III.

**ORDER RE: STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED**

In accordance with the *Stipulation* filed in this above captioned subcase, which is attached hereto and incorporated herein by reference, the Court accepts the written stipulation in its entirety and hereby orders:

1. Smith shall divert no more than 32 cfs, or 16 inches, into his ditch from the artesian well and collector pond located in the NE NE NE, Sec. 12, T. 1 S., R. 18 E., B.M., Blaine County, pursuant to SRBA Claim No. 37-04159 and an additional 48 cfs, or 24 inches, into the same diversion system pursuant to the unnumbered claim from the same source with a priority date of June 1, 1959.
2. Dreyer shall divert no more than 2.0 cfs, or 100 inches, into his ditch from said artesian well and collector pond, pursuant to SRBA Claim Nos. 37-02614 and 37-14289. Dreyer

**ORDER APPROVING STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED - 2**

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- shall be entitled to divert this quantity of water prior to Smith's diversion of any additional water under the unnumbered claim referred to in paragraph 1 above.
3. Neither party shall interfere with the other party's diversion and use of water under their respective water right claims, or necessary access to the artesian well and pond, or their respective diversion works and ditches.
 4. The parties shall install headgates and rating flumes, or other regulating and measuring devices, at the inlet of their respective ditches, sufficient to regulate and verify the amount of water diverted during the irrigation season. Said regulating and measuring devices shall be set to provide for delivery of water consistent with paragraphs 1 and 2 above and according to the priority of these four rights as claimed, as between those four groundwater right claims. Said regulating and measuring devices shall be installed and verified by an independent engineer, under the supervision of the parties, on or before June 15, 2002. The regulating and measuring devices shall be approved by the Idaho Department of Water Resources and/or the Watermaster for Water District No. 37. Each party shall be responsible for their own costs in installing and maintaining their respective regulating and measuring devices.
 5. Adjustments to the regulating and measuring devices shall be made by the Idaho Department of Water Resources, the Watermaster for Water District No. 37, or the Watermaster's agents.
 6. Neither party will adjust or interfere with the other party's regulating or measuring devices without prior written approval from the other party and authorization from the Idaho Department of Water Resources, the Watermaster for Water District No. 37, or the Watermaster's agents.

ORDER APPROVING STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED - 3

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- 7 The parties shall cooperate in filing documents and seeking judicial and administrative approval for interim regulation of the claims consistent with the *Stipulation* pending their investigation, recommendation, and determination in the SRBA.
- 8 Any water from the artesian well and collector pond in excess of that which is diverted by the parties pursuant to their respective water rights will be allowed to flow to Willow Creek. The parties shall pay the Idaho Department of Water Resources, the Watermaster For Water District No. 37, or the Watermaster's agents for administration according to the rates and charges made by the respective entity for administration within Water District No. 37.
- 9 Concurrence with the *Stipulation* by IDWR shall not be construed as recognition of the validity of any of the claims listed in paragraphs 1 and 2. The parties agree that the validity of these claims will be determined in the SRBA.
- 10 The *Stipulation* may be specifically enforced by the parties, as damages at law are not an adequate remedy, by filing for an order to show cause before the presiding judge of the Snake River Basin Adjudication. The parties agree to waive any right to contest the jurisdiction of this Court regarding enforcement of the *Stipulation*. The parties reserve all other rights and remedies. This paragraph shall not be construed as a limitation on such other rights and remedies.
- 11 The parties shall act consistently and in accordance with all terms and provisions of the *Stipulation*.


IT IS FURTHER HEREBY ORDERED that the action between these two parties identified as subcase 92-00017 is hereby dismissed without prejudice.

ORDER APPROVING STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED - 4

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IT IS SO ORDERED.

DATED 1-28-02


ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

ORDER APPROVING STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED - 5